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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Revision of the Commission's)
Rules To Ensure Compatibility) CC Docket No. 94-102
With Enhanced 911 Emergency) RM-8143
Calling Systems)
)

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REPLY OF AT&T WIRELESS SERVICES, INC.
TO OPPOSITIONS AND COMMENTS ON PETITIONS FOR RECONSIDERATION

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. 1.429, hereby replies to the oppositions and comments filed in response to petitions for reconsideration in the above-captioned proceeding.^{1/} These petitions demonstrate that a few key areas of the Order should be reconsidered.

INTRODUCTION

As AT&T Wireless made clear in its Petition for Reconsideration,^{2/} the Order presents several barriers to the smooth implementation of wireless E911. Specifically, the Order fails to provide a satisfactory approach to cost recovery, unjustifiably requires carriers

^{1/} In the Matter of Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-102, RM-8143 (rel. July 26, 1996) ("Order").

^{2/} Petition for Reconsideration of AT&T Wireless Services, Inc., filed September 3, 1996 ("AT&T Petition").

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to forward calls that do not transmit a code identification, and unfairly forces wireless carriers to assume liability for delivering 911 calls.

The majority of petitions for reconsideration agree on these points. Twelve parties weighed in against forwarding calls that do not transmit code identification.^{3/} Five parties argued for reconsideration of the complete absence of a cost recovery mechanism.^{4/} Four made the same argument as AT&T about carrier liability.^{5/} Only three parties objected to

^{3/} Petition for Partial Reconsideration of Ameritech, filed September 3, 1996, at 7 ("Ameritech"); Petition for Reconsideration of BellSouth Corporation, filed September 3, 1996, at 8 ("BellSouth"); Petition for Reconsideration of Bell Atlantic/NYNEX Mobile, Inc., filed September 3, 1996, at 4 ("BANM"); Petition for Reconsideration and Clarification of the Cellular Telecommunications Industry Association, filed September 3, 1996, at 3, 5 ("CTIA"); Petition for Reconsideration of the Personal Communications Industry Association, filed September 3, 1996, at 7 ("PCIA"); Petition for Reconsideration of the Xypoint Corporation, filed September 3, 1996, at 3; Petition for Reconsideration of PrimeCo Personal Communications, L.P., filed September 3, 1996, at 2 ("PrimeCo"); Petition for Reconsideration of Nokia Telecommunications, Inc., filed September 3, 1996, at 2 ("Nokia"); and Petition for Reconsideration and Clarification of Nextel Communications, Inc., filed September 3, 1996, at 3 ("Nextel"). Several others agreed in principle and made additional suggestions. Petition for Reconsideration and/or Clarification of Southwestern Bell Mobile Systems, Inc., filed September 3, 1996, at 5 ("SBMS"); Petition for Reconsideration and Clarification of the Mobile and Personal Communications Division of the Telecommunications Industry Association, filed September 3, 1996, at 12 ("TIA"); and Petition for Reconsideration and Clarification of Omnipoint Communications, Inc., filed September 3, 1996, at 4 ("Omnipoint").

^{4/} Ameritech at 16; PCIA at 13; Xypoint at 5; Primeco at 6; and Omnipoint at 19.

^{5/} Ameritech at 10; SBMS at 8; BellSouth at 9; and CTIA at 8.

the principles underlying AT&T's arguments.^{6/} For the reasons set forth herein, the Commission should adopt the positions supported in the record and urged by AT&T.

I. ALL WHO BENEFIT FROM SYSTEM UPGRADES SHOULD HELP TO PAY FOR THEM

The Commission's failure to provide national standards for wireless service providers to recover the costs of equipment upgrades^{7/} is unfair and may seriously delay rollout of wireless E911.^{8/} The potential wide disparity among the funding mechanisms likely to arise in the future will inevitably discriminate against wireless operators. Failure to adopt a uniform standard will result in higher subscriber charges, which will only increase due to the associated transaction costs arising from multiple funding regimes. Because access to E911 benefits subscribers and nonsubscribers alike, the Commission should commence a

^{6/} See Opposition and Comments of the National Emergency Number Association, the Association of Public Safety Communications Officials-International, Inc., and the National Association of State 911 Administrators, filed October 8, 1996 ("Joint Commenters"); Opposition and Response to Petitions for Reconsideration of the Texas Advisory Commission on State Emergency Communications, filed October 7, 1996 ("Texas ACSEC"); and Opposition of KSI Inc. and Muloc Inc. to Petitions for Reconsideration and Clarification, filed October 8, 1996 ("KSI/MULOC"). The Ad Hoc Alliance for Public Access to 911 also filed Comments in the Further Notice of Proposed Rulemaking further outlining its proposals with respect to forwarding non-code identified calls. Comments of the Ad Hoc Alliance for Public Access to 911, filed September 25, 1996 ("Alliance Comments"). AT&T will respond to the Alliance in its reply comments to be filed October 25, 1996.

^{7/} See Order at ¶ 89.

^{8/} See Comments of AT&T Corp., filed Jan. 9, 1995, at 43 ("AT&T Comments"); Reply Comments of AT&T Corp., filed March 17, 1995, at 28 ("AT&T Reply Comments") (noting, *e.g.*, compatibility of wireless and wireline services, the merits of various funding mechanisms, and the equity of distributing costs among various industry segments).

proceeding to address methods for cost recovery that will ensure that all industry segments contribute to the development of the wireless E911 infrastructure.^{10/}

A fair cost recovery standard is in the public interest. As PrimeCo points out, the "substantial federal interest in assuring the timely and effective implementation of E911"^{11/} will be undermined if the Commission declines to address this issue at the outset.^{12/} Revisiting the issue at a later point could result in additional delay and prejudice those carriers that move forward with implementation. The Commission has a responsibility to preclude conflicting state regimes from hampering the implementation of E911.

Moreover, a national cost recovery standard is in fact the only means by which E911 costs will be shared fairly.^{13/} The Joint Commenters' argument that a uniform cost recovery mechanism would exacerbate discrimination favoring some carriers over others does not make sense.^{14/} To the contrary, a national solution, as urged by AT&T, is the only

^{10/} See AT&T Comments at 43; AT&T Reply Comments at 28. Access to E911 benefits non-subscribers as well as subscribers. Wireless subscribers can -- and do -- call on behalf of strangers. Indeed, according to Ameritech, "the vast majority of 911 calls made from cellular phones are from 'good samaritans' who observe an emergency situation." Ameritech at 11. The broad public benefits of E911 have been recognized by the Commission. See Order at ¶ 5. Thus, the Texas ACSEC's argument to the contrary is unavailing. See Texas ACSEC at 8 (noting that "burdening" wireline consumers . . . is unfair.")

^{11/} PrimeCo at 7.

^{12/} The fundamental nature of this issue requires that the Commission address it. See Mobile Communications Corp. of America v. FCC, 77 F.3d 1399, 1403 (D.C. Cir. 1996) (remanding case for reconsideration of petitioner's arguments); Schurz Communications, Inc. v. FCC, 982 F.2d 1043, 1049-51 (7th Cir. 1992) (Posner, J); Cinderella Career and Finishing Schools, Inc. v. FTC, 425 F.2d 583, 586 (D.C. Cir. 1970) (agency's independent determination absent a basis in the record cannot be sustained).

^{13/} See PrimeCo at 7.

^{14/} Joint Commenters at 6.

way to ensure that cost recovery is accomplished fairly with due consideration to the level of E911 services available to wireless callers as compared to wireline callers. Anything else would guarantee the continuation of a patchwork of funding disparities. More importantly, without a national cost recovery standard, states will not be able to guarantee attainment of Phase II goals into the future.^{15/}

AT&T does not seek an "inflexible Federal prescription" or to stifle "innovative cost recovery solutions tailored to local conditions and needs."^{16/} Instead, the Commission should prescribe national standards that will ensure a fair framework for cost recovery. Absent such a framework, state-by-state disputes could block efficient implementation of wireless E911. While local conditions and needs should be considered, such consideration should not lead to results inconsistent with the national policy of encouraging expeditious rollout of these important services. For these reasons, the Commission should adopt national cost-recovery standards.

II. CARRIERS SHOULD NOT BE REQUIRED TO FORWARD CALLS THAT DO NOT TRANSMIT A CODE IDENTIFICATION

In reversing its initial decision not to require carriers to forward all 911 calls,^{17/} the Commission adopted a position wholly at odds with common sense and the record. As

^{15/} See Comments of New Jersey Office of Emergency Telecommunications Services, filed September 25, 1996, at 3-4 (noting that a less pro-active approach by the Commission could delay timely implementation of Phase II).

^{16/} Order at ¶ 90.

^{17/} See Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Notice of Proposed Rulemaking, 9 FCC Rcd 6170, 6177 (1994) ("Notice") (proposing to require carriers to forward only those 911 calls that originate from "service initialized" handsets, meaning (1) all of the carrier's subscribers in its home service area and (2) all users authorized to roam on a carrier's network).

AT&T argued, the Commission's justification for mandating the forwarding of calls that do not transmit a code identification could also be applied to require wireline carriers to connect 911 calls placed from telephones that have been disconnected.^{18/} Nor are CMRS mobile units analogous to payphones, as PCIA correctly notes.^{19/}

The Commission has acknowledged that requiring all 911 calls to be forwarded -- even if the mobile handset lacks a code identification -- presents difficult technical problems for service providers.^{20/} Moreover, PSAP-by-PSAP choices about receiving such calls will be difficult to implement where switches serve multiple PSAPs or cross state lines.^{21/} The resulting "patchwork" will be difficult to understand and explain to callers.

For the foregoing reasons, the Commission's decision will thwart the goal of broadening the availability of E911 services.^{22/} Significantly, the Joint Commenters

^{18/} Service disconnection may be attributable to a number of legitimate reasons, including consumer choice, stolen equipment, or repeated failure to pay a bill.

^{19/} See PCIA at 8-9.

^{20/} Order at ¶ 38. AT&T discussed these at length in its petition for reconsideration. See AT&T Petition at 4-6 (noting that placing 911 calls from handsets without a code identification will render ANI and call-back features useless, create confusion, increase waiting time for emergency response, and even threaten the efficacy of the 911 system). Ameritech neatly summarizes these problems as well: the requirement will facilitate prank calls; carriers will have no way to limit their liability, and no way to recover costs; and PSAPs still have no way to call back non-code identified callers. Ameritech at 7-9. See also CTIA at 5-12 (extensive discussion of the flawed nature of this decision and its serious implications for E911 implementation).

^{21/} See PCIA at 9.

^{22/} CTIA at 2, 5.

acknowledge disagreement among their members about the benefits of the requirement.^{23/}

In light of the concerns expressed in the record, and disagreement in the public safety community about the requirement, the solution adopted by the Commission is not "a reasonable response to a problem that the agency was charged with solving."^{24/}

Accordingly, the decision should be reconsidered.

III. WIRELESS CARRIERS SHOULD BE INSULATED FROM LIABILITY FOR DELIVERING 911 CALLS

The Commission's decision not to immunize wireless carriers from liability for 911 calls^{25/} raises serious problems and should be reconsidered.^{26/} Wireless carriers should be subject to the same "gross and wanton negligence" standard applied to wireline carriers by many states.^{27/} In the alternative, the Commission should require that states treat wireless

^{23/} See Joint Commenters at 2 (noting that, while they support the requirement, some of their members "believe that non-code calls should not be forwarded.") Initially, the Joint Commenters agreed with limitations on non-initialized phones, and they still recognize the difficulties arising from "patchwork treatment of non-code calls." *Id.* This conflict regarding the wisdom of requiring non-code calls to be forwarded cautions further against the proposed rule.

^{24/} Schurz, 982 F.2d at 1049 (citing Bowen v. American Hosp. Ass'n, 476 U.S. 610, 626-27 (1986) (plurality opinion)).

^{25/} See Order at ¶ 99.

^{26/} See CTIA at 8; BellSouth at 9-10; SBMS at 8-11.

^{27/} See, e.g., Carter's Custom Tile & Remodeling, Inc. v. Southwestern Bell Tel. Co., 834 S.W.2d 892 (Mo.Ct.App. 1992); Bulbman, Inc. v. Nevada Bell, 108 2d 588 (Nev. 1992).

carriers the same as wireline carriers with respect to liability.^{28/} There is no reason that wireless carriers should not be afforded the same liability protections as wireline carriers.^{29/}

Moreover, the Commission's rules require wireless carriers to provide access to 911 for all callers, even those with whom they do not have any contractual relationship.^{30/} As a consequence, wireless carriers cannot contractually insulate themselves from liability when non-subscribers use their systems.^{31/} As SBMS points out, promulgation of such a rule could very likely be used "as a sword in litigation against the carriers [rather] than as any

^{28/} The Texas ACSEC agrees that wireline and wireless carriers should not be treated differently with respect to liability. See Texas ACSEC at 4. Unfortunately, their position is premised on, and incorrectly tied to, their interpretation of state law. See Texas ACSEC at 4-5 n.4 (citing Wireless Providers of Texas v. Advisory Commission on State Emergency Communications, No. 95-15818 (Dist. Ct. Travis County) (plaintiff wireline carriers liable for fees under Tex. Health & Safety Code)). Wireless carriers are appealing that case because the statute at issue does not give the Texas ACSEC independent taxing authority over wireless carriers, not because they disagree with its incidental effect with respect to liability. Thus, wireless carrier liability is at stake in the aforementioned litigation only as an incident to the Texas ACSEC's mistaken statutory interpretation. This situation illustrates precisely why the Commission should immunize wireless carriers from liability for 911 calls. Absent consistent treatment, wireless carriers will be subject to conflicting or misguided liability policies.

^{29/} The Texas ACSEC implies that such treatment is called for simply because wireline and wireless carriers provide "functionally equivalent services." Texas ACSEC at 4. Such reasoning mixes two analytically distinct issues: limited liability and service provision. To begin with, limited liability is a simple matter of fairness and there is no legitimate rationale for denying wireless carriers the same protections afforded wireline carriers. While AT&T agrees in principle that functionally similar services should be afforded comparable regulatory treatment, cf. 47 U.S.C. § 332(d), this principle must be construed in the light of relevant technological limitations.

^{30/} See Order at ¶¶ 29-46.

^{31/} See SBMS at 9-10 (noting that wireless carriers can afford themselves little protection by including language in their contracts when they are required to carry calls by non-subscribers); Ameritech at 11 (contractual limitations on liability are insufficient because "not all wireless calls are made by [that service's] subscribers").

type of shield."^{32/} In fact, the absence of a protection against liability could have the unintended consequence of discouraging E911 deployment where PSAPs decline to hold carriers harmless.^{33/} For these reasons, the Commission should reconsider its decision with respect to national liability standards.^{34/}

^{32/} SBMS at 10.

^{33/} Id.

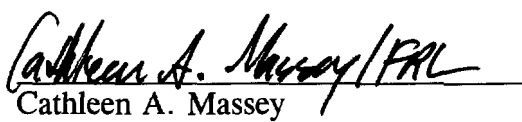
^{34/} AT&T remains concerned about carrier liability for disclosing calling party number, location and other call-related information to emergency services personnel. The Department of Justice recently provided a legal opinion to the Commission as to whether Communications Assistance for Law Enforcement Act (CALEA) or other electronic surveillance laws preclude telecommunications service providers from providing such information without a subpoena or court order. See Order at ¶¶ 95-98. AT&T requests that the opinion be made available for further review and comment by carriers prior to any further action with respect to carrier liability.

CONCLUSION

For the foregoing reasons and as more fully set forth above, the Commission should reconsider its Order in the above-captioned proceeding.

Respectfully submitted,

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October 23, 1996

CERTIFICATE OF SERVICE

I, Michelle Taylor, hereby certify that on this 23rd day of October, 1996, I caused copies of the foregoing "Reply of AT&T Wireless Services, Inc. to Oppositions and Comments on Petitions for Reconsideration" to be sent by messenger(*) to the following:


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